

How Can the HRC Jurisprudence Reshape Environmental Litigation in Pakistan

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ABSTRACT

Environmental degradation and climate change catastrophes, in each case and everywhere, has severe repercussions on various human rights including, but not restricted to, the right to life. Therefore, the issue is getting a wider recognition from institutions at national and global level. The Human Rights Committee in its General Comment No 36 and various individual complaints has linked up the climate change with the right to life which, in turn, poses questions to state party's foreseeable procedural responsibilities under ICCPR. The HRC jurisprudence, like other state parties, is influencing the interpretation of constitutional provisions at domestic courts in Pakistan which, in turn, potentially gave impetus to the idea of environmental constitutionalism i.e., extending constitutional protection of the environmental matters though it was not expressly mentioned in the constitution.

Keywords: *Climate Change, Environmental degradation, Right to Life, Obligations, Interpretation, Jurisprudence*

INTRODUCTION

United Nation Framework Convention on Climate Change ranked Pakistan in one of the ten most harmed countries by the climate change (UNFCCC 2022). According to the World Air Quality Report 2023 Pakistan is one of the four most polluted countries in the world; with PM_{2.5} i.e., particulate matter concentrations 14 times above than WHO guidelines. Based on the Air Quality Index, the air quality in Pakistan is the second most polluted on the globe reducing the life span by 4.4 years. (IQAir 2023). This high concentration of the suspended particulate matter in the atmosphere is most critical challenge to air in Pakistan. Particles up to 10 microns or smaller, PM₁₀ can be inhaled to respiratory system. Fine Particulate, as they are commonly referred to, are those with 2.5 diameter or less. Exposure to both PM₁₀ and PM_{2.5} can result in serious health issues such as lung asthma, lung cancer and premature death in severe cases.

However, its response to cope with issue of environmental degradation and climate change is far from appropriate and befitting, especially when looked at with lens of human rights. Each climate catastrophe and the degradation of environment has severe repercussions on various human rights, including the right to life. The Human Rights Committee in its Concluding Observations on the Second Periodic Report of Pakistan expressed serious concerns on the adverse effect of climate change, pollution, environmental degradation, and natural disasters on the enjoyment of human rights, especially right to life particularly of the disadvantaged communities and the people living in the rural areas who were excessively affected by the floods. The Committee also voiced its displeasure over the want of proper data on sustainable policies adopted by Pakistan to shield the most vulnerable population from impact of climate change and environmental degradation (HRC 2024).

General Comment No. 36 (2018): Linking Up Environmental Degradation and Climate Change with Right to Life¹

The United Nation Human Rights Committee notes “that right to life, under article 6 of the International Covenant on Civil and Political Rights, 1966”, is the supreme right permitting no derogation even in time of emergency or armed battle threatening the national life. The meaningful protection of right to life is a precondition for the enjoyment of other human rights under ICCPR.

The Committee underscoring the value of right to life moved beyond the narrow and ‘biological existence’ understanding of life, further notes that a narrow interpretation of the right to life essentially be avoided. Expanding the interpretation of right to life, the Committee observes, that it includes protection against premature or unnatural death caused either by deliberate action or omission i.e., unlawful and excessive use of force or neglecting the foreseeable risks such as climate disaster. The right to life also includes, it noted, “the right to live with dignity”. The state party is under obligations to protect the right to life from predictable threats and life-threatening circumstances. The state may be found in violation of article 6 even if the threats and situation do not cause loss of life. The state party, therefore, is required to take appropriate positive measures such as developing, when necessary, disaster management and contingency plans in order to increase preparedness for coping with man-made and natural disasters such as earthquakes, tsunamis, hurricanes etc.

The Committee duly recognized the impact of pollution, environmental degradation and climate change on the right to life. Linking the right to life up with environmental degradation and climate change, the HRC notes that the most serious threat to life of the existing and future generation is posed by the unsustainable development and climate change. Obligations of the state parties under the international environmental law overlap with the obligations under article 6 of the ICCPR. The obligations to protect the right to live with dignity require the state parties to preserve the environment from harm caused by the climate change and pollution. State parties must, therefore, prepare and execute concrete environmental standards, make sure the sustainable usage of natural resources, conduct environmental impact assessment and coordinate its activities with other relevant states that could have an important environmental impact. It must also notify the concerned states about emergencies and natural disasters and coordinate with them. It should also provide proper “access to information on environmental hazards and pay due diligence to precautionary measures” (HRC, General Comment No. 36 2018).

Views of The HRC on Individual Complaints Based on Climate Change “Under Article 5 (4) of the Optional Protocol”

The jurisprudence developed in ‘General Comment No 36’ which linked up the right to life with climate change and environmental degradation has also been practically applied in individual complaints, submitted under article 5 (4) of the additional protocol I, in its quasi-judicial functions by the Human Rights Committee. The Following two cases will appropriately elaborate that how the HRC linked up the environmental degradation and climate change with right to life in individual complaints:

Caceres v Paraguay (CCPR/C/126/D/2751/2016)

The authors of the complaint claimed that State party, by allowing heavy spraying of poisonous agrochemicals on soybean farms next to their homes, has failed in its responsibility to guard their lives and corporal integrity as it did not exercise due diligence to enforce the environmental standards and laws

¹ Adopted by the Human Rights Committee at its 124th Session in 2018

which amounts to violation of, inter se, right to life with dignity. They also claimed that unchecked crop dusting polluted the rivers in which they fish and drink water and ruined the crop they use for food; violating their right to life with dignity.

The State party argued that the Covenant does not recognize environmental rights, therefore, the communication is not admissible *ratione materiae*. It denied that breach of article 6 of the ICCPR.

The committee noted that since the symptoms of pesticide poisoning e.g., nausea, headache, fever, stomach pain, diarrhea, vomiting, etc. developed in the authors, due to which one of their relatives had died, it constituted a violation by omission of article 6 of the ICCPR i.e., the State party has failed in its duty to offer protection. The Committee, relying on *Nell Toussaint v Canada*, noted that the state must take positive steps to protect the right to life because a narrow interpretation does not fully convey its concept. Referring to its 'General Comment No. 36' the Committee further noted that the right to life also include the entitlement of right persons to enjoy the right to life with dignity and be free from acts and omission that could cause premature or unnatural death. The Committee also recalled that the State party is also bound by Stockholm Convention on Persistent Organic Pollution. The HRC further noted that undeniable connection between the environmental protection and the achieving of human rights by noting that environmental degradation can badly affect the enjoyment of right to life with dignity. Finally, the Committee noted held that it is of the view that the heavy spraying of the area with toxic agrochemical, the action which is properly documented, posed a reasonably foreseeable threat to the life of the complainants given the fact that such extensive fumigation has polluted the rivers they fish in and drink water and ruined their crops and farm animals; their source of food that amounts to violation of right to life under article 6 of the Covenant (*Cáceres v Paraguay* 2019).

Torres Island v Australia (CCPR/C/135/D/3624/2019)

The second individual complaint related to this study, comparatively recent also, is known as Torres Island Case. In (*Torres Island v Australia* 2022), the authors, residents of the Torres Strait Islands, claimed to be the most susceptible to the effect of climate change. Citing a governmental body's report, the authors stated climate change has severely threatened the marine and coastal ecosystem and therefore, the life and livelihood of the islanders. They further stated that the increase in the sea level owing to climate change, which has caused flooding, erosion, high temperature and ocean acidification, will potentially threaten their viability and may, consequently, render the island completely inundated and uninhabitable. Because, they claimed, due to rise in the ocean level the saltwater infiltrated into the soil of the island so the areas earlier used for cultivation can no more be cultivated.

The state party was unsuccessful to allay the impact of climate change; to adopt and implement an adaptation measure and infrastructure to protect "the right to life which also include the right to a healthy environment"; thus violating, inter se, article 6 of the ICCPR. They further argued that state party's duties arising out of international climate change conventions are part of the broader legal framework used to evaluate its compliance with the Covenant. The state party, in breach of article 6, has failed to adopt laws or other "measures to protect the authors life and to prevent a foreseeable loss of life from the impact of climate change and to protect the authors' right to live with dignity."

In its submission Australian government claimed that the international climate change treaties such as Paris Agreement are starkly different from the human rights treaties; both have different scopes and aims, therefore, they are not relevant to the interpretation of the later like ICCPR. Interpreting a human right treaty through the Paris agreement would be a violation of the basic principles of international law. The clear language of the ICCPR cannot be overridden by the ordinary meaning of the Paris Agreement. The

Australian government further submitted that the authors of the communication did not face any imminent threat of violation of any right; they have yet to suffer the effects of climate, and they “must show that an act or omission by the State has adversely affected their enjoyment of a right under the treaty. Moreover, none of the alleged failure to take mitigation measures fall within the ambit of the treaty.”

Article 6 (1) of the ICCPR asks the States to protect the individuals from arbitrary deprivation of their lives within their jurisdictions. It does not demand the States to protect them from the general effects of climate change. The harm invoked by the authors is too distant to indicate a violation of article 6. Further, extending article 6 (1) to a right to life with dignity, though an appreciate-able policy objective, is not supported by the ordinary meaning of the article, rules of treaty interpretation or any jurisprudence that is relevant.

The Human Rights Committee, with respect to Australia’s claim that article 6 (1) of the treaty does not require it to prevent the foreseeable loss of life due to climate change, noted that if interpreted in a restrictive way the right to life cannot be appropriately understood and that the State parties are required to take positive measures to protect it. Recalling its General Comment No 36, discussed above, the Committee observed that the right to life includes the right to live with dignity and be free from acts and omissions which may cause unnatural and premature death. The obligation of State parties to protect the right to life extends to predictable threats and life-threatening conditions which may end in loss of life. Even if such conditions and threats do not result in loss of life, State party may be in violation of article 6 of the treaty. Such life-threatening conditions could include the adverse impacts of climate change, environmental degradation and unsustainable development which constitute most serious threats to the ability of existing and future generation to enjoy the right to life. “State parties are required to take all proper steps to address the conditions that may give rise to direct threats to the right to life or hinder the public from enjoying the right to life with dignity.”

As to the take of the Australia that, in the light of article 31 of the Vienna Convention on Law of Treaty (VCLT), 1969², the stretching of article 6 of the ICCPR to a right to life with dignity via GC 36 is unfounded by the principles of treaty interpretation, the Committee held that as the VCLT necessitates that a treaty should be interpreted in good faith and in line with usual meaning and object and purpose of the treaty, therefore, the wording at issue is compatible with the provisions of VCLT. It also held that the preamble of the Covenant stated that the inherent dignity and equal rights of all members of the human family, which originate from the intrinsic dignity of human being, are the foundation of peace, justice and freedom in the globe. It further noted that the ideals of free human being enjoying the freedom from want and fear can be attained only when circumstances are created where everybody may enjoy their rights. The committee held that the effective enjoyment of right to life can be compromised by the environmental degradation which adversely affect the well-being of the individual and thus may result in violation of right to life under the Covenant.

The Committee recalled that without robust efforts, at national and international level, “the impact of the climate change may expose people to violation of right to life with dignity.” Moreover, when there is an extreme risk of the entire island being submerged by the sea water, the condition of life on such an island is inconsistent with the right to life with dignity even before the realization of risk. The Committee also noted that adaptation and mitigating actions taken by Australia, aimed at reducing the existing vulnerabilities establish resilience to climate related harms, could allow it to take positive steps to guard and relocate, where necessary, the victims.

² ‘Vienna Convention on the Law of Treaties’, often called Treaty on Treaties, is an international treaty regulating drafting, interpreting, amending and terminating treaties between sovereign states.

However, three members of the HRC in their dissenting opinion held that the promises of future projects aimed at decreasing the adverse impact of climate change are insufficient remedies as they have not been achieved yet, while on other hand right to life with dignity of the authors of the complaint has been violated as harm to the foundation of their homes has already happened, their means of subsistence has been adversely affected by saltwater penetration to the soil and land erosion by the flood. They found the State party in violation of article 6 as it failed to implement the adaptation plans to alleviate the impact of climate change.

By the same token, Duncan L Muhumuza, another member of the Committee, dissenting from the majority, concluded that the State party has failed to thwart a likely loss of life from the effect of climate change as it did not take any steps decrease the greenhouse gas emission and cease promoting fossil fuel use that endangered the complainants and their livelihood on the island which amounted to violation of right to life with dignity as provided by article 6 of the Covenant.

The Judicial Response to Climate Based Litigation in Pakistan

In line with international jurisprudence on climate change and human rights, Pakistan's higher judiciary, over the years, broadened the interpretation of fundamental rights particularly right to life under article 9 which has been linked up with right to a clean and healthy environment. The very first and the landmark environment-based litigation in Pakistan is Shehla 'Zia WAPDA (PLD 1994 SC 693)' in which the Supreme Court linked up the right to life with protection from environmental harms. The Court reasoned that right to life is not limited to mere biological existence but also extends to the quality of life which, amongst other things, also include the right to clean and healthy environment; the right to life is incomplete without the clean and healthy environment. The Shehla Zia case proved to be a pioneer for environmental litigation in Pakistan based on the public interest litigation.

Later on, in 'Imran Tiwana v Province of Punjab (PLD 2015 Lahore 522)' the Lahore High Court while setting aside a developmental project in Lahore city because it was initiated without a valid Environmental Impact Assessment (EIA) report, held that environmental protection is the necessary component of right to life under article 9 which embraces the right to healthy, clean and sustainable environment and human dignity under article 14 which complements environmental rights because an unplanned, unsafe and polluted environment diminishes human dignity. Terming environmental justice as constitutional concern the court underscored that development should not come at the cost of fundamental rights. However, this bold and celebrated judgment, was reversed by the Supreme Court of Pakistan in appeal through a regressive and narrow interpretation of right to life. Through out the globe, the environmental concerns are getting recognition but, unfortunately, the Supreme Court deviated from the established precedents to uphold the construction of project in the judgment reported as (2015 SCMR 1739). Not only the judgment of Supreme Court was criticized to be based on political consideration rather than an appropriate and bona fide legal interpretation, it also could have crucial implications in the future (Siddiqui 2025) as it downplayed the Environmental Inspection Assessment which, according to the 'United Nations Conference on Environment and Development', also known as Rio Summit, is one of the crucial components of developmental projects.

Realizing the importance of adopting measures for climate change effects, few years later, in 'Asghar Leghari v Federation of Pakistan (2018 CLD 424)' the Court underscored the urgent necessity of adopting immediate measures to respond the disruptive climate change, affirming the judiciary's role to promote climate awareness for advancing social and environmental justice. The government's sluggishness to execute the 'Framework for Implementation of Climate Change Policy (2014-2030)' was also deplored by the Court and emphasized that such inaction amounts to violation of fundamental rights of the citizens

which the State is bound to protect. It recognized the climate change, which resulted in droughts, heavy floods, water and food security in Pakistan. On constitutional and legal side, it is a clarion call for protection of fundamental rights of citizens, especially, the most living in vulnerable population; the Court recognized it to be the greatest challenge to right to life and human dignity.

By the same token, underscoring the imperatives of incorporating the climate changes apprehensions into governmental decisions and policies especially on critical issues like water resource management, the Supreme Court, in ‘DG Khan Cement Factory v Government of Punjab (2021 SCMR 834)’ prohibited the expansion and setting up of the cement factories in environmentally sensitive areas. Similarly, recognizing the direct impact of climate change on the fundamental rights of the citizen especially the right to life, dignity and property, the Court in ‘Raja Zahoor Ahmed v. Capital Development Authority (2022 SCMR 1411)’ directed integration of climate change considerations into urban planning.

Similarly, the honorable Supreme Court in ‘Amir Ishaq v the Province of Khyber Pakhtunkhwa (PLD 2024 SC 1134)’ observed that when the life to life and human dignity is interpreted in the light of constitutional principles such as equality, democracy, political, social and economic justice, necessarily, it acquires a substantive and expanded meaning which affirms and encompasses international environmental values like environmental impact assessment, precautionary principle, sustainable development inter-generational and intra-generational equity and the public trust doctrine. Various international legal instruments, ratified by Pakistan including the recent United Nations General Assembly Resolution, also affirm this environmental protection that all individuals, everywhere, have the right to clean and healthy environment. In order to protect the environment and health of residents of locality, the Supreme Court not only directed the Environmental Protection Agency to shut down the operations of the stone crushing plants which were polluting the atmosphere unless and until they comply with the ‘National Environmental Quality Standards’ but also asked the federal and provincial government to update the NEQS that were enacted in 1993.

Taking into consideration another important environmental issue i.e., the rapid deforestation in the case titled as ‘Meher Badshah v Govt of Khyber Pakhtunkhwa (PLD 2025 SC 36)’ which basically challenged the illegal cutting of 218 *shisham* trees, the Court observed that despite of the fact that our country is one of the most vulnerable states to climate change the forest department views the forests as resource to be exploited. After narrating importance of forests in preserving a balanced natural environment and the adverse effects of deforestation, the Court observed that due to the sensitivity of environmental protection for right to life, ‘the right to clean and healthy environment’ has been incorporated in the Constitution of Pakistan through article 9A. Therefore, effective preservation measures be taken so that the importance and significance article 9A must be brought to bear on everyone.

General Analysis of The Effect of Environment Based Litigation in Pakistan

The rising number of litigations related to climate change and environmental protection before the higher judiciary and the evolving jurisprudence, in response, that is aligned with General Comment No, 36 and findings of the Committee in individual complaints, demonstrate the judiciary’s active role in promoting adaptation measures, increasing public awareness and influencing policy developments. It also indicates how the higher judiciary in Pakistan has been making references to international environmental law and human rights. Furthermore, the identity of language between the jurisprudence developed by the HRC and higher judiciary of Pakistan is also quite remarkable. Having said that, it needs to be appreciated that the courts in Pakistan have been linking up, through an extensive interpretation of article 9, environmental protection with right to life even before the General Comment No.36 was adopted by the HRC. Moreover, in climate change litigations, the court also has been required to craft the remedies within the framework of constitution boundaries to prompt a timely and an effective response from the government.

What can remarkably be noted in the jurisprudence developed by the Pakistan's higher judiciary is that the inter-connected urgent challenges of widespread pollution, climate change and biodiversity loss necessitated the elevation of environmental concerns to the status of paramount constitutional norms. This phenomena of environmental constitutionalism representing a contemporary development at the intersection of international law, environmental law and human rights. It indicates the growing recognition that environmental protection is a legitimate subject for constitutional entrenchment and judicial enforcement across the globe. Environmental constitutionalism can serve as a mechanism for embedding environmental law and environmental protection within an elevated and permanent constitutional framework. By doing this, it can represent a transformative approach of governance that is based on constitutional protection for environmental governance, thereby, strengthening environmental safeguards through mechanism such as fundamental rights, rule of law and established principles of environmental governance. Before the recently passed 26th amendment the Constitution of Pakistan did not expressly mention the right to clean and healthy environment, however, the Courts, assuming the role to confront the climate change effects, derived it from the right to life and human dignity (Ahmed 2023).

The normative alignment of Pakistani judgements with the HRC jurisprudence also herald the sharp rise of environmental litigation in the future based upon state responsibility to avoid reasonably foreseeable situations that could pose risk to right to life with dignity.

CONCLUSION

In the light of foregoing discussion, it can be concluded that in order to meet its international responsibilities and constitutional commitments as pointed out by the Human Rights Committee and higher judiciary in various litigations, and with aim to allay the climate change effects and environmental degradation, Pakistan needs to adopt a sustainable prevention policy structure and make sure its effective implementation coupled with legal framework. The policy needs to focus on disaster prevention and preparedness to protect, particularly, the most vulnerable population from the negative impact of environmental degradation and natural disasters.

It can be noted that environmental litigation in Pakistan manifested itself mainly on the fundamental rights and writ jurisdiction of the higher judiciary under the constitutional law where the courts have extensively developed the jurisprudence linking up environmental degradation and climate change with fundamental rights. However, contrastingly, there is very little engagement with the jurisprudence produced under the environmental framework legislation like 'Pakistan Environmental Protection Act, 1997' and environmental protection laws at provincial level (Lau 2021). Pakistan should strengthen, in terms of capacity and independence, the environmental protection tribunals at gross level to be accessible to the common people.

Pakistan also needs to align its environmental protection policy with General Comment No. 36 of the Human Rights Committee and make sure the sustainable use of land and natural resources such as forests, water, etc. It needs to develop and implement international environmental standards to reduce the water and air pollution. It needs to ensure that all developmental projects must be climate resilient and sustainable wherein the meaningful participation of the public, especially those who are directly affected, is made sure (Nadeem 2014).

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